

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
BridgeWave Communications Inc. Request for)	WT Docket No. 11-25
Waiver to Aggregate Contiguous Channels Over a)	
Single Carrier in the 18 GHz Band)	

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS OF BRIDGEWAVE COMMUNICATIONS INC.

BridgeWave Communications Inc. (“BridgeWave”), by its counsel and in response to the Commission’s Public Notice released March 1, 2011 (DA 11-401), hereby submits its reply comments in the above-referenced proceeding.

Not a single party in this proceeding has opposed BridgeWave’s waiver request on its merits. FiberTower, for example, states that “[d]evelopment of more efficient models offering wireless backhaul solutions at microwave frequencies is only to the benefit of the public. ... [T]o deliver Gigabit capacity, the industry should have the ability to aggregate multiple RF channels. [BridgeWave’s] proposed operation should not create new interference implications for other users in the band, as users are still expected to comply with other Part 101 rules.”¹ The Fixed Wireless Communications Coalition (“FWCC”) “agree[s] . . . that the flexibility to aggregate contiguous channels will help lower costs, improve reliability, and eliminate intermodulation issues as demands on backhaul capacity continue to increase.”²

¹ Comments of FiberTower Corporation, WT Docket No. 11-25, at 2-3 (filed Mar. 15, 2011).

² Comments of Fixed Wireless Communications Coalition, WT Docket No. 11-25, at 2 (filed Mar. 15, 2011). FWCC asks that the Commission impose the following additional conditions on the requested waiver: (1) systems operating on two or more aggregated channels must maintain a bandwidth efficiency of at least 6 bps/Hz over the occupied band; (2) the modulated carrier must occupy the entire aggregated channel; and (3) systems operating on aggregated channels must comply with the same emission mask requirements (at the edge of the aggregated band) that are currently applicable to single channels. *Id.* at 2. BridgeWave does not object to any of these additional conditions.

Likewise, XO Holdings, Inc. (“XO”) “fully supports BridgeWave’s ongoing effort to develop improved equipment for high-capacity backhaul service. . . XO believes that the development of BridgeWave’s FlexPort family of radios can ultimately increase utilization not only of the 18 GHz band, but also the Local Multipoint Distribution Service (“LMDS”) and other upper microwave spectrum bands.” At the same time, however, XO asks the Commission to address BridgeWave’s request in a rulemaking proceeding, claiming that BridgeWave’s proposal “is, in effect, a proposal to amend the Commission’s 18 GHz channelization rule.”³ That statement is not correct, and, as shown below, deferral of BridgeWave’s waiver request to a rulemaking is neither necessary nor in the public interest.

BridgeWave’s filing is a waiver request, not a petition for rulemaking, and is written as such.⁴ BridgeWave is acting only on its own behalf, not on behalf of all 18 GHz users; the waiver, if granted, would apply to users of BridgeWave’s 18 GHz radios and no one else.⁵ BridgeWave also asked that the Commission review its filing under the Commission’s specific legal standards for waiver requests generally, not the broader public interest standard that applies to rulemakings.⁶ Again, BridgeWave’s filing is a waiver request for BridgeWave only, and nothing more than that.

Moreover, even if the Commission were to agree with XO that similar waivers might be available to other 18 GHz users in the future, a grant of BridgeWave’s request would still be

³ XO Comments at 2.

⁴ See BridgeWave Communications Inc. Request for Waiver to Permit Channel Aggregation by Non-MVPD Users of the 18 GHz Band, WT Docket No. 11-25, at 1 (filed May 12, 2011) (“Request”). (“BridgeWave . . . requests that the Commission issue a limited waiver of Section 101.147 of its rules . . .”).

⁵ *Id.* (“BridgeWave is merely asking that users of *its* 18 GHz radios be afforded channel aggregation rights comparable to those the Commission already affords to backhaul providers who operate in the 24 and 39 GHz bands.”) (footnote omitted) (emphasis added).

⁶ *Id.* at 3. (“Under Section 1.925, the Commission may grant a waiver of its rules if it is shown that either (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. The waiver requested herein satisfies both prongs of this test and related Commission precedent.”) (footnote omitted).

consistent with Commission precedent. For example, the Commission's Wireless Telecommunications Bureau ("WTB") and Office of Engineering and Technology jointly issued to equipment vendor Alvarion, Ltd. ("Alvarion") a limited waiver of the Commission's power limits for mobile devices operating in the 3650-3700 MHz ("3.6 GHz") band, with the proviso that other 3.6 GHz vendors would be afforded similar treatment if they complied with the terms of the waiver.⁷ Prior to that, WTB issued to FiberTower a limited waiver of its rules restricting use of smaller antennas in the 11 GHz band, even though FiberTower had also filed a petition for rulemaking asking for a permanent amendment of those rules.⁸ In that case, the Commission rejected arguments similar to what XO is arguing here:

We disagree . . . that granting the waiver request would constitute a *de facto* rule change that the Commission should not permit without the benefit of thoroughly examining the underlying policies of the rule in a formal rulemaking proceeding. SIA believes that granting the waiver request would amount to a *de facto* rule change because, by the time the Commission were to act on the related rulemaking, FiberTower, as well as those competitors of FiberTower that will likely seek similar waivers, may have installed thousands - and even tens of thousands - of antennas pursuant to waivers. We emphasize that our decision to grant FiberTower a waiver is based upon FiberTower's showing that it has an immediate need to deploy smaller antennas in the 11 GHz band in order to provide its services. Moreover, we explicitly find that our action does not prejudice the action the Commission may take on FiberTower's petition for rulemaking.⁹

Finally, there is nothing in BridgeWave's waiver request that would stop the Commission from initiating the rulemaking XO appears to be looking for. As in FiberTower's case, the

⁷ See Alvarion Ltd., *Order*, 25 FCC Rcd 3863, 3867 (WTB & OET 2010) ("[T]o the extent that equipment manufacturers file similarly situated applications for certification of 3650 MHz equipment . . . , OET's Laboratory Division may process such applications consistent with this Order and the Commission's Rules.").

⁸ See FiberTower, Inc., *Order*, 21 FCC Rcd 6386 (WTB 2006).

⁹ *Id.* at 6396 (footnotes omitted).

Commission may simply issue the requested waiver subject to any action taken in that rulemaking. In fact, BridgeWave has already agreed to this in its Request.¹⁰

WHEREFORE, for the reasons already set forth in the record, BridgeWave Communications Inc. requests that the Commission grant its waiver request in accordance with the terms set forth therein.

Respectfully submitted,

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¹⁰ See Request at 6 (volunteering to accept the following condition on the requested waiver: “BridgeWave’s customers will be advised that any operations under the requested waiver will be subject to any action the Commission may take in its post-[National Broadband Plan] Part 101 rulemaking (or any similar proceeding) that affects channel aggregation in the 18 GHz band.”).

CERTIFICATE OF SERVICE

I, Jennifer L. Canose, hereby certify under penalty of perjury that the foregoing Reply Comments were served this 25th day of March, 2011 by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to:

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